

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
July 19, 2016

v

AARON ALLEN BELLOR,

Defendant-Appellant.

No. 327424
Bay Circuit Court
LC No. 14-010099-FH

Before: OWENS, P.J., and BORRELLO and O'BRIEN, JJ.

PER CURIAM.

Defendant, Aaron Allen Bellor, was convicted by a jury of unlawfully killing an animal, MCL 750.50b, and failing to provide an animal with adequate care, MCL 750.50(2)(a), and sentenced to 180 days in jail and three years' probation. Defendant was also ordered to pay \$250 in restitution. He appeals as of right his April 1, 2015 judgment of sentence. We affirm.

I. FACTUAL BACKGROUND

Defendant's convictions arise out of the death of his fiancée's schnauzer named Sassy.¹ Defendant's fiancé adopted Sassy from a coworker. Less than one week after adopting Sassy, defendant apparently spilled several cups of boiling water on Sassy while preparing his fiancé's child's breakfast.² After scalding Sassy, defendant apparently took him to the bathroom, put him in the tub, and ran cold water over his burns. Sassy's fur began falling off and exposed his scalded skin, so defendant wrapped Sassy in a towel and subsequently drove his fiancé's child to school with Sassy in the vehicle. After dropping the child off, Sassy continued moaning and whining as a result of the burns. So, defendant drove to a road near a farm field and released Sassy into the field. Rather than leave, however, defendant decided to coax Sassy into the

¹ The record is inconsistent regarding Sassy's gender. While we will refer to Sassy as male, which is consistent with defendant's fiancé's testimony, other documents and testimony indicate that Sassy may have been female.

² A law enforcement officer who eventually found Sassy's body noticed that she was missing body hair, and a veterinarian who performed the necropsy on Sassy determined that she had been burned. According to the veterinarian, the burns alone would not have been fatal.

middle of the road and strike him with his vehicle in an apparent attempt to put him out of his misery. After he survived being hit the first time, defendant ran over Sassy a second time to ensure his death. Still unsuccessful, defendant ran over him a third time.³ He then drove away. Two eyewitnesses observed defendant killing Sassy from their homes and immediately called 911 and animal control. Rather than tell his fiancé that he ran over her dog two or three times, defendant told her that Sassy had gotten off his leash and run away.

When defendant's fiancé returned home that day, she decided to search for Sassy. After unsuccessfully searching for Sassy, defendant's fiancé contacted animal control in hopes that they had found her. Animal control informed her that a dog matching Sassy's description had been found, but they refused to provide her further detail in light of the suspicious circumstances surrounding Sassy's death. Defendant's fiancé went to animal control the following day and demanded more information. Animal control gave her an opportunity to identify the dog that animal control had found, but she was unable to confirm whether or not it was Sassy with certainty due to the dog's condition. When defendant's fiancé returned home, she confronted defendant about the disappearance of Sassy. Defendant admitted that he had spilled boiling water on Sassy, that he had tried running cold water over him to no avail, that he had taken Sassy "aimlessly" to a field, and that he had run Sassy over. Defendant eventually confessed to animal control that he killed Sassy. When later interviewed by law enforcement, defendant confessed to the same.

Defendant was thereafter charged with and convicted of unlawfully killing an animal, MCL 750.50b, and failing to provide an animal with adequate care, MCL 750.50(2)(a), and sentenced as described above. This appeal followed.

II. ANALYSIS

On appeal, defendant challenges his conviction of unlawfully killing an animal, MCL 750.50b, and sentence in two separate ways.⁴ First, defendant argues that the trial court's supplemental jury instruction in response to multiple questions raised by the jury during deliberations deprived him of his constitutional rights to due process and a trial by jury. Second, defendant argues that Michigan's statutory restitution scheme is unconstitutional because it permits the trial court to order restitution based on facts that were not found by a jury beyond a reasonable doubt. Each will be addressed individually below.

³ The testimony regarding how many times defendant either hit or ran over Sassy was inconsistent as presented at trial, but all witnesses testified that it was either two or three times, and defendant admitted running over the dog at least two on purpose to his fiancé, animal control, and law enforcement.

⁴ Notably, defendant does *not* challenge his conviction for failing to provide an animal with adequate care, MCL 750.50(2)(a), on appeal.

A. SUPPLEMENTAL JURY INSTRUCTION

Defendant first argues that the trial court's supplemental jury instruction in response to multiple questions raised by the jury during deliberations deprived him of his constitutional rights to due process and a trial by jury.⁵ We disagree.

“[J]ury instructions that involve questions of law are . . . reviewed de novo.” *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006) (citation and internal quotation marks omitted). “Jury instructions must clearly present the case and the applicable law to the jury.” *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005). “Challenges to jury instructions are considered in their entirety to determine whether the trial court committed error requiring reversal.” *People v Eisen*, 296 Mich App 326, 330; 820 NW2d 229 (2012) (citation and internal quotation marks omitted). Stated differently, “this Court examines the instructions as a whole, and, even if there are some imperfections, there is no basis for reversal if the instructions adequately protected the defendant's rights by fairly presenting to the jury the issues to be tried.” *People v Dumas*, 454 Mich 390, 396; 563 NW2d 31 (1997).

On appeal, defendant specifically takes issue with the trial court's response to the following two concerns raised by the jury after several hours of deliberations: (1) “At any point, can an owner decide the fate of a pet?” and (2) “We are in disagreement as to whether a pet owner is free to use his/her own judgment in determining when a pet should or can be put down.” In response, the trial court eventually responded with the following instruction:

In considering the meaning of just cause, I instruct you that the purpose of the law is to ensure that animals are treated humanely. The law does not allow a person to kill an animal in any manner he or she deems appropriate. You must consider the manner in which the animal is killed in determining whether the killing was done without just cause or excuse.

As stated above, however, we are required to review jury instructions in context in determining whether or not an instruction requires reversal. *Eisen*, 296 Mich App at 330; *Dumas*, 454 Mich at 396.

To begin, the trial court instructed the jury as follows with respect to the charge of unlawfully killing an animal, MCL 750.50b, in its final jury instructions:

⁵ While defendant did challenge this jury instruction before the trial court, he did not do so on the same grounds as those raised on appeal. Specifically, defense counsel only challenged the second sentence of the instruction at issue, explaining that it “may make them wonder if -- well, so is running over the head of the animal inappropriate[.]” He asked that “such as torture” be included at the end of the second sentence instead. He did not, however, mention any constitutional challenges. Thus, this argument is unpreserved for appellate review. *People v Redman*, 188 Mich App 516, 518; 470 NW2d 676 (1991) (“Objections raised on one ground are insufficient to preserve an appellate attack based on different grounds.”).

Okay. In Count 1, the defendant is charged with a crime of Unlawfully Killing an Animal. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

First, that the defendant killed an animal, to wit: A dog.

Second, that when the defendant killed the dog, he did so willfully and without just cause or excuse.

The trial court additionally instructed the jury that, “if you have questions about the jury instructions before you begin deliberations or that may arise during the deliberations, you can submit them to me in writing, in an envelope, and give it to the bailiff”

The jury did precisely that. First, they asked the following question: “Is there a specific law regarding lawful killing of an animal?” The trial court responded with the following instruction: “The law does define lawful killing, however, none of those definitions apply under the facts of this case. Examples of lawful killing include fishing, hunting, trapping, pest or rodent control, veterinarian euthanasia, and others.” Defendant objected with respect to the second sentence, i.e., the list of examples, only. Shortly thereafter, the jury asked a second question: “Does a private citizen have a right to terminate their own pet when injured?” The trial court responded with the following instruction: “This is a question I am unable to answer in the context of this case. I refer you to the jury instructions on the elements of the charges that the prosecutor must prove beyond a reasonable doubt.” Defendant objected to this instruction as well.

Nearly two hours later, the jury asked another question: “What would be the definition of just cause? (From the transcripts).” The trial court responded as follows: “The law does not define what is ‘just cause’ or ‘excuse,’ this is for you to decide using the ordinary meaning of words, and there are no transcripts that define these terms.” Defendant did not object to this instruction. Approximately 15 minutes later, the jury asked another question: “We have agreement on one of the counts, but we cannot agree on the other count. What is the next step?” At this point, the trial court decided, and the parties agreed, that it was appropriate to send the jury home for the day and address this issue the following morning.

Upon returning the following the morning, the trial court explained, after meeting with the prosecutor and defense counsel, what it and the attorneys believed was proving problematic:

After contemplation . . . over the evening hours and this morning, I’ve decided that, in looking at the Deadlock Jury Instruction, I thought one of the things that I would do is just give ‘em one paragraph of that Deadlock Jury Instruction, and that’s the paragraph that says, “If you think it would be helpful, you may submit to the bailiff a written list of the issues that are dividing or confusing you.” It will then be submitted to me. I will attempt to clarify or amplify the instructions, in order to assist you in further deliberations.

* * *

The suspicion, I think, that I have and counsel have, is that they're having difficulty with determining what is just cause, so-to-speak, in accor-as [sic] an element of the offense, without just cause or excuse. Of course, that was one of the questions, and we told them that the law does not define what is just cause or excuse, this is for you to decide using the ordinary meaning of words.

The trial court decided, based on defense counsel's request, that it would read the jury the entire deadlock jury instruction.

Approximately 30 minutes after that, the jury asked the questions at issue in this appeal: (1) "At any point, can an owner decide the fate of a pet?" and (2) "We are in disagreement as to whether a pet owner is free to use his/her own judgment in determining when a pet should or can be put down." In response, as stated above, the trial court instructed the jury as follows:

In considering the meaning of just cause, I instruct you that the purpose of the law is to ensure that animals are treated humanely. The law does not allow a person to kill an animal in any manner he or she deems appropriate. You must consider the manner in which the animal is killed in determining whether the killing was done without just cause or excuse.

Defendant objected, arguing that only the first sentence of the instruction quoted above should be used. One hour later, the jury found defendant guilty of both charges.

On appeal, defendant argues that this instruction "was completely unresponsive to the jury's question." Describing his decision to run Sassy over three times as euthanasia, defendant argues that the trial court clearly implied to the jury that defendant's chosen method of euthanasia indicated that there was not "just cause" and that the jury should conclude that there was not "just cause" as well. Stated differently, defendant argues that the trial court "allowed its personal view of the evidence to direct the jury's deliberations" as well as that the trial court "erroneously directed the jury as to the materiality of certain evidence." In essence, he claims that "it was completely improper for the judge to give a non-responsive answer that expressed the judge's subjective view of the evidence and steered the jury's deliberations." Thus, he concludes, he is entitled to a new trial.

Applying the rules set forth above, we conclude that the trial court's instructions in response to the jury's questions, when reviewed in context, *Eisen*, 296 Mich App at 330, "clearly present[ed] the case and the applicable law to the jury," *McGhee*, 268 Mich App at 606. Thus, reversal is not required. *Dumas*, 454 Mich at 396. While perhaps imperfect, the trial court's instruction was somewhat responsive to the jury's questions—as the trial court explained, and the parties apparently agreed, the jury was struggling with the definition of "just cause," and it answered the jury's questions, i.e., whether pet owners "can . . . decide the fate of a pet" and "whether a pet owner is free to use his/her own judgment in determining when a pet should or can be put down," in that context. The trial court expressly answered these questions: "The law does not allow a person to kill an animal in any manner he or she deems appropriate." Although it also referenced the manner in which the animal is killed, which may have been beyond the scope of those two specific questions, it was a logical response considering the jury's previous questions regarding "just cause" and did not, as defendant contends, instruct the jury that the

manner of killing used by defendant was not just. In sum, while perhaps imperfect, this instruction, when reviewed in context, does not require reversal.

Furthermore, this Court, albeit in nonbinding authority, MCL 7.215(J)(1), has expressly recognized that the manner in which a pet owner kills his or her pet “must be considered” in a similar context:

With regard to the element of just cause or excuse, defendant’s father and mother did testify that the dog was going to be put down. Defendant contends that this was a sufficient reason to excuse the killing and that the other circumstances surrounding the killing are irrelevant. We simply cannot agree. To adopt defendant’s interpretation would mean that as long as there was a legitimate reason to kill the family pet, the act could be committed in any manner. Taken to the extreme, killing an animal by drawing and quartering would be permissible if the animal was in an advanced state of failing health or danger to others. However, such an interpretation would negate the statute’s purpose; namely, to ensure that animals are treated humanely. See MCL 750.49 *et seq.* To this extent, then, *the manner in which the animal is killed must be considered* because statutes should be construed reasonably, keeping in mind the purpose of the act. *People v Spann*, 250 Mich App 527, 530; [655] NW2d [251] (2001). We must look to “ ‘the object of the statute, the harm which it is designed to remedy, and apply a reasonable construction which best accomplishes the statute’s purpose.’ ” *People v Russo*, 439 Mich 584, 595; 497 NW2d 698 (1992), quoting *In re Forfeiture of \$5,264*, 432 Mich 242, 248; 439 NW2d 246 (1989). [*People v Kruithoff*, unpublished opinion per curiam of the Court of Appeals, issued December 16, 2003 (Docket No. 242739), p 2.]

Thus, even if we assume that the jury instruction at issue was nonresponsive, it was nevertheless legally correct, and defendant does not offer any persuasive explanation as to why an otherwise legally correct instruction that is supported by the evidence that had been presented would be improper. Rather, defendant paints a picture of his actions in running over Sassy twice as appropriate form of euthanasia under the circumstances. That position is unpersuasive in light of the authority cited above.

B. RESTITUTION

Defendant also argues that Michigan’s statutory restitution scheme is unconstitutional because it permits the trial court to order restitution based on facts that were not found by a jury beyond a reasonable doubt.⁶ We disagree. In *People v Corbin*, 312 Mich App 352, 371-373; ___ NW2d ___ (2015), this Court expressly rejected this argument. As defendant acknowledges, we are bound by that decision, MCR 7.215(J)(1), and we decline defendant’s invitation to express disagreement with the decision reached by the *Corbin* panel.

⁶ The \$250 that defendant was ordered to pay in restitution reflects the costs of Sassy’s necropsy.

III. CONCLUSION

Accordingly, because we conclude that the trial court's supplemental jury instruction regarding just cause did not deprive defendant of his constitutional rights to due process and a trial before a jury, and because we are bound by *Corbin*, we affirm defendant's convictions and sentence.

Affirmed.

/s/ Donald S. Owens
/s/ Stephen L. Borrello
/s/ Colleen A. O'Brien